UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

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THE HONORABLE JAMES V. SELNA, JUDGE PRESIDING

HAYDEE OUANO RASTEGAR, et al., Plaintiffs, vs. WELLS FARGO BANK; et al., Defendants.	SACR-16-78-JVS

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Santa Ana, California

March 14, 2016

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SANTA ANA, CALIFORNIA; MONDAY, MARCH 14, 2016; 2:04 P.M.

02:04 THE CLERK: Item No. 1, SACV-16-78-JVS, Haydee Ouano Rastegar versus Wells Fargo Bank, N.A.

02:04 MS. CAZZELL: Good afternoon, Your Honor. Maryann Cazzell on behalf of plaintiffs Rastegar.

02:04 THE COURT: Good afternoon.

02:04 MR. LA: Good afternoon, Your Honor. Dennis La on behalf of the defendant Wells Fargo Bank.

02:04 THE COURT: Good afternoon.

02:04 I trust you have both seen the tentative.

02:04 MS. CAZZELL: Yes, Your Honor.

02:04 MR. LA: Yes, Your Honor.

02:04 THE COURT: Let's take up the bank's motion first.

02:04 Do you want to address that?

02:05 MS. CAZZELL: Yes, Your Honor. Thank you.

02:05 I appreciate the Court's tentative, and there is a lot to cover, so I will try to address the most important things first.

02:05 First, the breach of contract cause of action and the breach for implied covenant of good faith and fair dealing. Breach of contract is alleged in the Complaint on pages 16 through 22, and it's a pretty long cause of action. The Court correctly found that there was no HOLA preemption as to this but said ultimately in the tentative that the plaintiffs could not allege performance because they had

02:05 defaulted on the loan.

02:05 The subject allegations here are at paragraphs 40 through 42 of the Complaint. Most of these allegations, Your Honor, if you are not letting the tail wag the dog, which is what is happening with the breach of contract claim for failure to allow a loan mod, is that Wells Fargo Bank breached the terms of the trust deed and the promissory note by, number one, claiming a default amount in excess of that allowed under those loan instruments; and then, number two, charging an excessive interest rate over those allowed by the very terms of those.

02:06 The Court relied on the case Reyes Aguilar versus Bank of America, which I'm going to get to below, to say that you can't allege breach of contract if you haven't shown performance, i.e., on the grounds that the plaintiffs were in default at the time.

02:06 Okay, the majority of the allegations here are based on illegality and fraudulent acts and acts that were contra public policy in exceeding the money allowed and the interest rate, the 2.8 percent interest rate that we allege plausibly was fixed at the time World Savings went out of business.

02:06 So before I even address those, I want to talk about voidness. Our allegation here is that really the bank's acts were void, not just voidable. The difference is

02:07 that void is that they are just void no matter what, and they can be cut off at any point. There is case law, Seyfarth (1972) 22 Cal.App.3d 841. At 854, that opinion talks about how the Court can set aside a void action, a void order, at any time, and it likens it to lopping off what has been termed a dead limb on the judicial tree, a void order, citing to the McMillan Petroleum Corp. versus Griffin case.

02:07 The thing here is that Wells Fargo's action in recording a Notice of Sale and in filing a proof of claim in the Bankruptcy Court that were in excess of the total amount allowed under those instruments is void, period.

02:07 Under this analysis, the void question, we don't even get to the question of whether or not, you know, the plaintiffs were in default or whether they performed. It's just void.

02:08 So assuming that the Court wants to get to these other issues, I want to address then the Reyes case. First of all, Reyes is very distinguishable. It was the plaintiffs' third bite at the apple in trying to allege a Complaint in federal court. In that case, the Court had not found HOLA preemption, and they were allowed state court claims there as opposed to the kind of breach of contract claims and such that we have here.

02:08 In fact, in Reyes, the plaintiffs were in default.

02:08 What happened is the bank had given them a loan modification. They had made payments for over a year under this and then got into a default and did not file a bankruptcy. That case is very different. They didn't have a situation with a cure and three years' worth of plan payments under the bankruptcy.

02:09 Because this is so important, I really need to address the Court's tentative finding that the plaintiffs were in default. The timing of when the plaintiffs were allegedly in default is really crucial here. First of all, the tentative opinion -- it's at the bottom of page eight where there is the allegation -- or the statement finding that the plaintiffs were in default so they couldn't maintain a breach of contract claim.

02:09 Okay, it's clear to me the Court does not mean that if a party defaults at any time on a loan they are out to lunch, and they can never bring a cause of action ever against the bank. I'm sure the Court didn't mean that. I'm sure the Court didn't mean that the bank could then do whatever it wanted on the loan, charging excessive interest rates, upping the amount and trying to foreclose for an amount not permitted under the loan instruments themselves. I'm sure the Court didn't mean that.

02:09 Parties cure defaults. They do it every day. Every day -- well, every weekday of the week parties cure

02:10 defaults and mortgage instruments, Your Honor. There are special allegations, special ways, to do it, to reinstate or cure a loan. So to hold otherwise on that would mean Wells Fargo Bank could just tack on another million dollars and then say, oh, well, you defaulted before. Sorry, you can't have a claim. I know the Court never intended that.

02:10 It's important to determine when the Court felt that there was a default. I'm assuming that the Court meant there was a default when the plaintiffs didn't make payments for three months as they were directed to do by World Savings.

02:10 Okay. Does that mean that they were in default again when they did what was directed by World Savings to wait another six months and then as directed by Wachovia to wait another six months? I don't know at what point it cuts out. But assuming that all that is accurate and that I am correctly interpolating the Court's rationale, I can understand that. I mean, I don't agree obviously. I believe that there is promissory estoppel and stuff at work here, but I understand it.

02:11 The problem here is that no matter what, no matter how you look at it, the plaintiffs were not in default once the bankruptcy plan was confirmed. There is plenty of law on that subject. It's 11 U.S. Code Section 1327. It's cited all over the defendant's papers, in their Opposition

02:11 to the Motion for Preliminary Injunction. They reference cases there at pages four through seven and eight of their Opposition to the Motion for Preliminary Injunction citing the Bullard case, the Trulis case, the Blendheim, the Kelley, the Martin cases, and even Seven Collier On Bankruptcy.

02:11 I want to read actually a part -- see, that comes right directly from their opposition. Here is what they say. They cite from Collier: "In essence, a valid plan substitutes in much the same way a common law novation would the obligation as stated in the plan for all pre-confirmation claims and interests." And they emphasize that part.

02:12 "As to agreed provisions, the Plan is a contract between the proponent and those bound by it. Should a confirmed Plan later fail, creditors may sue only on the obligations as stated in the Plan." That's as cited by them, Seven Collier On Bankruptcy, page 1129.01 (1), 15th Edition Revised.

02:12 Okay, so what this means is that at the time a plan is confirmed there is no default anymore, Your Honor. The only thing there could be a default on is if they default on the plan, and then somebody can sue again under the plan. So if there were a default earlier, even assuming there were, at the time the plan was confirmed and as long

02:13 as that plan is going, there is no default.

02:13 So my clients are in a confirmed plan as the Court is aware. They've made payments for almost three years, three years in May. Under the confirmed plan, they are not in default. They can sue for breach of contract. They can sue for breach of the implied covenant of good faith and fair dealing. And those other arguments don't apply to them.

02:13 Were it otherwise, it would be the situation that there would be no such thing as adversary complaints in bankruptcies because there would be no point in it. There would always be a finding that the debtors were in default on a mortgage loan, so they are out of luck. They can never sue. And I know the Court would never intend that result.

02:13 If for whatever reason the Court doesn't agree with that rationale, then at the time that the plaintiffs finish their plan payments in two years and all the pre-petition, quote, "default" is cured, at that point they definitely are not in default.

02:14 So here we get into some difficulties because the tentative said the dismissal would be with prejudice. Well, then what happens? Suppose my client -- suppose this case is dismissed today and my client has finished their plan payments. Does that mean in two years they can never try to recover the money? I'm sure that's not what the Court

intended. That doesn't make sense to me.

At the very least, I would say if there is a dismissal it would need to be without prejudice. Even if there isn't an ability to amend, the dismissal should be without prejudice. And there should be some finding that there is a tolling of the statute of limitations on these claims because otherwise it's tantamount to my client having a dismissal with prejudice because of the running of the statute of limitations in the interim.

Moving on to the breach of implied covenant, it's similar to the same analysis. It's clear under California law that implied in every contract entered into in this state that the covenant of good faith and fair dealing prohibits one party from gaining an advantage on the other one, prohibits a party from taking away from the other one the benefits of full performance of the contract.

In this case, the benefits of full performance are things like getting the benefit of that 125 percent limitation on the trustee, getting the benefit of whatever the contracted for interest rate was. In this case -- and I don't think the Court had a chance to address it in the tentative -- we have alleged very plausibly that the contract interest rate is now fixed at 2.8 percent.

It's fixed because the contract -- the trustee was at a 2.8 percent margin with an index that was set by the

02:15 internal GDW index of Golden West Bank Financial. It said
02:15 our index rate that fluctuates is based on the interest rate
02:16 that Golden West only uses in making its loans to its other
02:16 subsidiaries, and it was never changed. Wells Fargo Bank
02:16 never changed it. Wachovia never changed it. No one ever
02:16 changed it, and it went forward.

02:16 Golden West went out of business. GDW index
02:16 disappeared, and the margin became the interest rate. So
02:16 now we are claiming plausibly that there are lots of
02:16 overcharges. We don't even really know that the plaintiffs
02:16 were in default, and we don't know for how long because we
02:16 don't know how far off the index calculations were on the
02:16 interest rates, which goes to why we do think we need an
02:16 accounting.

02:16 One quick aside that kind of involves banking
02:16 regulation law, the Court may not be aware but the mere fact
02:16 that there is a 125 percent limitation on the trust deed and
02:16 that the debt got to where it exceeded that doesn't mean
02:17 that the plaintiffs were in default because it was a
02:17 negative amortization loan and specifically allowed the
02:17 principal to increase. It allowed it to increase without a
02:17 limit actually. It just had a provision that said if it
02:17 gets over 125 percent then that excess has to be immediately
02:17 credited back.

02:17 Your Honor, I have been working very hard on

02:17 trying to determine exactly why that was in there, and I'm still working on it. I believe that there are some securities regulation violations going on. I think it was an old provision under the FSLIC, Federal Savings and Loan Insurance Corporation, which had an agreement with World Saving that said, sure, we will insure your investments, but you'd better make sure nothing ever exceeds 125 percent of the principal.

02:17 So to do that, World Savings put in that provision, and then when it exceeded it, it would rather just give up any excess than have all its loans audited or called or be in violation of federal securities regulations.

02:18 Anyway, moving on, the Court had said in the tentative that the only way we can show performance is you have to get to promissory estoppel or an excuse for nonperformance. First, I don't think that's right. I think Civil Code Section 1151 says it's an express excuse for nonperformance if there is a statement from the obligee that payments have to be made or to stop them from making the payments. And it doesn't matter if it's in writing, and it doesn't matter if there is a stipulation otherwise.

02:18 So the argument that, well, we have a writing in the trust deed and the promissory note that says that there can be no modifications except if it's in writing and statute fraud applies, that doesn't matter. It also says

02:18 that Civil Code Section 1511 allows for where there is a
02:18 delay in performance because the obligee suggested the
02:19 delay. So I think that gets us around that problem.

02:19 Again, you know, in this 12(b)(6) motion in our
02:19 first bite at the apple and our first appearance actually
02:19 here in this case, the Court, of course, needs to construe
02:19 the facts most favorably to my clients. It feels that that
02:19 didn't really happen and, if anything, be given leave to
02:19 amend.

02:19 The other causes of action where the Court found
02:19 in the tentative that HOLA did not apply were the sixth and
02:19 seventh causes of action for negligent misrepresentation and
02:19 constructive fraud respectfully. Obviously I disagree with
02:19 the Court's analysis here. I think fraud does apply,
02:19 especially constructive fraud, because we have shown that --
02:19 we don't really have to have reliance on that because it's
02:19 constructive fraud.

02:19 But even if we do, we have alleged it in the
02:19 Complaint. We have alleged the damages and that the
02:20 plaintiffs relied on Wells Fargo's statement of what the
02:20 actual damages were in putting that amount into their
02:20 proposed plan.

02:20 Then on the other causes of action, the Court had
02:20 stated that they were barred by HOLA. Okay, this was a case
02:20 that was filed in Superior Court in October of last year and

02:20 removed. So there are state claims in here because, of course, it's the state action that was removed.

02:20 I'm concerned about a formulaic approach that Wells Fargo seems to have. You know, I have done a lot of research on these cases, and it's always the same thing. Somebody files the state court case. It gets removed by Wells Fargo Bank. Then Wells Fargo immediately files its 12(b)(6) motion as it has to, but it uses the same exhibits and the same request for judicial notice.

02:20 Exhibit A is the trustee -- I mean, I have looked at the Complaints. I have looked at the court cases. And the court cases talk about, oh, we can accept judicial notice of this, this, and this.

02:21 THE COURT: What is wrong with all of that?

02:21 MS. CAZZELL: What's wrong with all of that is that it's not paying particular attention to the facts of the case, the particular case, i.e., this case. It doesn't --

02:21 THE COURT: What's wrong with taking judicial notice of the Deed of Trust?

02:21 MS. CAZZELL: Oh, there is nothing wrong with that. That's fine. But you have Exhibit A, the Deed of Trust. The promissory note is usually in there, not always.

02:21 Anyway, the Court has taken judicial notice of that, which is great, and the promissory note. But then

02:21 Wells Fargo Bank puts in, okay, well, here's World Savings going out of business and here is Wachovia, and here is Wells Fargo Bank buying Wachovia.

02:21 What wasn't pinpointed here and what I have raised and I haven't seen raised in the other cases was that Wachovia converted to an N.A., a national association. The cases that are cited say that for diversity purposes and FSB, a Federal Savings Bank -- if it's taken over by an N.A., then the N.A. -- here Wells Fargo -- can claim FSB status for the purpose of doing a HOLA preemption. But none of these cases address the situation where the bank, Wachovia, converted expressly to an N.A., and then Wells Fargo took it over.

02:22 So that's what I am a little concerned about, that maybe some of these little nuances are missed. As the Court is aware, we argued that Wells Fargo --

02:22 THE COURT: Well, the HOLA preemption applied at the time the loan was initiated, correct?

02:22 MS. CAZZELL: I think it may have.

02:22 THE COURT: The answer is clearly yes.

02:22 MS. CAZZELL: So then why --

02:22 THE COURT: Put aside the scope of the preemption. A HOLA preemption would apply to the issuing entity given its status at the time of the issuance of the loan, true?

02:22 MS. CAZZELL: I don't know. I will concede -- I

02:23 mean, what I have a difficulty with is that Wells Fargo is saying we are a national association, so we can remove you on diversity grounds and saying we are an FSB in this purpose.

02:23 Okay, so assuming that the Court is -- that that's correct -- let's say that is correct. But then it was -- the HOLA preemption went away at the time Wachovia, who had the loan --

02:23 THE COURT: You see, that's what I disagree with.

02:23 MS. CAZZELL: You disagree with that?

02:23 THE COURT: There are two lines of cases. If the entity issuing the loan was subject to a HOLA preemption, that lasts the life of the loan regardless of whether the HOLA preemption was asserted by the holder of the loan at the time of the litigation.

02:23 There are two lines of cases. I just think it makes more sense to honor the initial status. It's a red line rule. Everybody knows where they are.

02:24 MS. CAZZELL: Well, there is an advantage to red line rules, but I don't think -- I didn't see any cases where Wells Fargo or what is now an N.A. had taken over a loan from another N.A., which was Wachovia.

02:24 THE COURT: Are there any other points you want to address?

02:24 MS. CAZZELL: Yes.

02:24 THE COURT: You have got about five minutes.

02:24 MS. CAZZELL: All right. Anyway, the Court in Footnote 3 addressed our motion or request to remand. I believe it should be remanded because I don't think the bank can hold both positions at once, an N.A. and an FSB on the other side.

02:24 The 125 percent excess limitation was not addressed at all in any of the contract kind of claims and only obliquely in the fraud claims, and I think that should be addressed.

02:24 The plaintiffs are willing -- if the Court is going to stand on its tentative, the plaintiffs would rather dismiss without prejudice the eighth cause of action, which is where the Court had said, well, you can have leave to amend because we think that that's the tail wagging the dog, and we would rather have a clearer record.

02:25 THE COURT: You just want to dismiss and go up? Is that what you are saying?

02:25 MS. CAZZELL: Dismissing the eighth cause of action, which was the one where the Court said -- and rightly so -- that there were some federal claims in there --

02:25 THE COURT: Right.

02:25 MS. CAZZELL: Or at least if the Court sticks with its tentative certify it as appealable under FRCP 54(b).

02:25 I wanted to address quickly another case that came up. It's Jones versus Wells Fargo Bank. This was a Louisiana case from 2012, 2013, affirmed going back and forth to the Bankruptcy Court. Michael Jones, Civil Action No. 12-1362, in the Eastern District of Louisiana where Wells Fargo Bank was --

02:25 THE COURT: I'm looking at your memorandum. That doesn't seem to be discussed in your memorandum. It's certainly not in your list of authorities.

02:26 MS. CAZZELL: No, it wasn't addressed. Of course I'm now --

02:26 THE COURT: Or in your memorandum in opposition.

02:26 MS. CAZZELL: Right. This is addressed in response to the tentative ruling, Your Honor.

02:26 Wells Fargo Bank apparently does this regularly, and the Court -- this particular judge found that Wells Fargo's litigation tactics were particularly vexing because only through lots of discovery was Wells Fargo's litigation standards found and that Wells Fargo never actually went and changed things.

02:26 For example, in this case, Wells Fargo is now well aware that it has filed a Proof of Claim in excess of the amount of money, and it hasn't done anything to change it yet. That's actually a violation of the stay, the automatic stay.

02:26 In this quote from this case, it says: "Wells Fargo has taken advantage of borrowers who rely on it to accurately apply payments and calculate the amounts owed. Perhaps more disturbing is Wells Fargo's refusal to voluntarily correct its errors."

02:27 At the least, Your Honor, in our accounting cause of action, the Court --

02:27 THE COURT: But the tentative correctly notes that accounting is not a cause of action. It's a remedy.

02:27 MS. CAZZELL: Okay. In the argument that pertains to it, the Court said on page 15, citing to its own case, Williams versus Wells Fargo Bank, that an accounting was not available where there was no money owed.

02:27 THE COURT: Right.

02:27 MS. CAZZELL: I have a difficult time with that, Your Honor, because it sounds like a summary judgment kind of finding. We -- you know, this is our first appearance. How could it already have been determined that there is no money owed? We already know there's an excess amount of interest charged.

02:27 At least if we plausibly accepted the plaintiffs' allegations as true, which we should on a Motion to Dismiss, we already know that they tried to foreclose on an amount in excess of what was allowed under the trust deed, and that excess had to under the terms of the promissory note be

02:28 refunded back. And that was almost $100,000. So how can we say -- how can we know as a matter of law that there would be no money owed?

02:28 I think at the very least we should have leave to amend. We want to allege some SEC violations, some unfair competition law things per the recent case that came down that was cited. I think there is even some RICO problems here. But, again, obviously the Court is going to do what it's going to do, and if need be, we will dismiss the eighth cause of action without prejudice. We think if there is a dismissal it should all be without prejudice because there is just no reason for it to be with prejudice at this point and just deprive the plaintiffs of -- I mean, they think they have damages of close to a million dollars. That's general damages.

02:28 Thank you, Your Honor. Thank you for allowing me to be heard.

02:29 THE COURT: Thank you.

02:29 Mr. La.

02:29 MR. LA: Thank you, Your Honor.

02:29 Counsel has mentioned the phrase "tail wagging the dog." I think that that phrase and that saying is very applicable here because that addresses the whole bankruptcy issue that's in place in this case.

02:29 Plaintiffs raise this idea of novation saying

02:29 that, all right, because now the Bankruptcy Court has come back and confirmed the Chapter 13 plan that that somehow absolves plaintiffs of their default, their prior default, the default that was in place which caused their filing BK twice, not once but twice. Their allegations made clear that they felt like they had no other choice in order to stop the nonjudicial foreclosure but to file these two BK applications.

02:30 The Bankruptcy Court's confirmation of their Chapter 13 plan does not -- it doesn't erase any sort of past default. What it does is it takes plaintiffs' request -- they're asking the Bankruptcy Court to say, hey, instead of these payments -- I know this much is owed, which they set forth clearly in their bankruptcy application. They are saying please confirm my plan. What I will do is I will pay what is owed, and I will continue to make payments because the party's loan agreement requires it. That the Bankruptcy Chapter 13 Plan has been confirmed does nothing to cure the past default.

02:30 Plaintiffs also raise this idea of voidness and all these other allegations that, you know, makes -- that the voidness doctrine somehow makes the breach of contract claim and the elements that support the breach of contract claim irrelevant, and it does not.

02:30 THE COURT: I didn't see the voidness argument in

02:30 their opposition. Did I miss something?

02:31 MR. LA: No. I was going to say that as well. But in addition to that, counsel is just talking about a breach of contract. If there was this extra interest that was charged, if there was these extra principal payments that were charged, then that's just a breach of contract, Your Honor. That is something that plaintiffs were well aware of before the bankruptcy was filed going all the way back to 2008 or so.

02:31 In addition to not explaining how their inability to pay the mortgage obligations were justified -- I mean, all of these claims are really time barred, Your Honor. I mean, we are talking about from 2007 to 2009 when some of these events happened.

02:31 The Notice of Default was recorded in April 2010. Plaintiffs' Complaint says incorrectly that the foreclosure proceeding started in July 2010. Well, if that's the case, they knew of their harm at that time. If that's the case, giving them the benefit of the four-year statute of limitations, then any breach of contract, any breach of the implied covenant theory has been time barred.

02:32 There is also no justification that has been set forth by counsel here. It seems that plaintiffs' inability to make their mortgage payments really came from outside circumstances, that they had agreed to do all this

02:32 landscaping in the community that they lived in. That has nothing to do with the bank, Your Honor. And the Notice of Default that has been judicially noticed by the Court clearly sets forth that any default came in September of 2008.

02:32 So by plaintiffs asserting that the bankruptcy somehow like erases all those acts is not correct, and it really goes against any tenet of what a California breach of contract claim can support.

02:32 The promissory estoppel claim, I mean, again, counsel raises a lot of different allegations. Now she is talking about the SEC and some RICO violations. It doesn't get to the fundamental elements that are necessary to articulate a promissory estoppel claim, which is an unambiguous promise. That is the first element. There is no unambiguous promise set forth in the pleadings.

02:33 Maybe to the best is that the bank promised to consider plaintiffs for a loan mod review. But the pleadings are clear -- and these are judicial admissions made by the plaintiffs -- that that review did happen, and they were denied. So there cannot be any promissory estoppel claim based just on the fundamental elements that are necessary in order to just articulate such a claim.

02:33 Accounting, I mean, plaintiffs' counsel raises a lot of points here. Accounting, I mean, there is no money

02:33 that is owed from Wells Fargo. The payments that -- she is saying that they made these extra payments. These extra payments were ordered by the Bankruptcy Court that they promised to give through their bankruptcy to get the protection of their BK plan to stop the forfeiture in order for them to like get back on the payment plan so they can fulfill their mortgage obligations.

02:34 So any claim that there is any amount owing from the bank to plaintiffs is inaccurate, and there is no special relationship that would give rise to an accounting claim anywhere.

02:34 Real briefly, constructive fraud and negligent misrepresentation, I mean there is no duty. There is no fiduciary duty. There is no legal duty of care that can support any claim based on a claim where a legal duty is the prerequisite. It's the predicate to get past -- in order to go forward with the other elements.

02:34 We have talked about HOLA here a lot. I think Your Honor correctly points out that based on successor and merger principles and based on contract principles any sort of federal preemption follows with the loan through perpetuity.

02:35 That's is something that's confirmed by the OTS itself. They have weighed in on this issue, and they have said, hey, yes, these loans are supposed to be able to be

02:35 purchased by another entity that is not an FSB, and the federal preemption under HOLA will apply.

02:35 Is there any other specific points that I may address, Your Honor?

02:35 THE COURT: No. Thank you.

02:35 Briefly, Ms. Cazzell.

02:35 MS. CAZZELL: Thank you, Your Honor.

02:35 It's alleged in the Complaint -- I'm trying to locate the exact paragraph now -- but also in the declaration that Gholam Rastegar submitted in support of the Motion for Preliminary Injunction -- and the Court considered them together. Clearly, at paragraph four of his declaration: "As noted in the Complaint, while we did not realize it until later in the year 2015, after we were able to locate our present attorney and she had the opportunity to review the loan paperwork, the amount of money Wells Fargo claimed was due was incorrect based on excessive claims of principal and interest."

02:36 Come on, Your Honor, the Court, attorneys, and apparently a lot of other attorneys couldn't catch these little nuances. How could lay people possibly know about, you know, the excess, what's in the trust deed, what's buried in the promissory note a few pages in in regular small print that says if there is an excess of 125 percent it has to be sent back? I mean, if anything, I feel that

02:36 counsel's arguments -- you know, hey, well, too bad. They were in default at one point, so they lose hands down on everything. That's not right.

We are here and I'm addressing the particular issue of whether or not my clients had a right because they were or were not in default on the loan to even bring these claims. They are saying, well, no, you were in default on the loan once, so too bad. That's not right. That's not the law. That doesn't make any sense. It's certainly not equitable. It throws out the whole purpose of bankruptcies and plans. It doesn't seem like a logical conclusion, and I suggest it's not the right one, Your Honor.

THE COURT: Thank you very much. The matter will stand submitted.

(Whereupon, the proceedings were concluded.)

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CERTIFICATE

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I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

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Date: July 17, 2016

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/s/ Sharon A. Seffens 7/17/16

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SHARON A. SEFFENS, U.S. COURT REPORTER

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